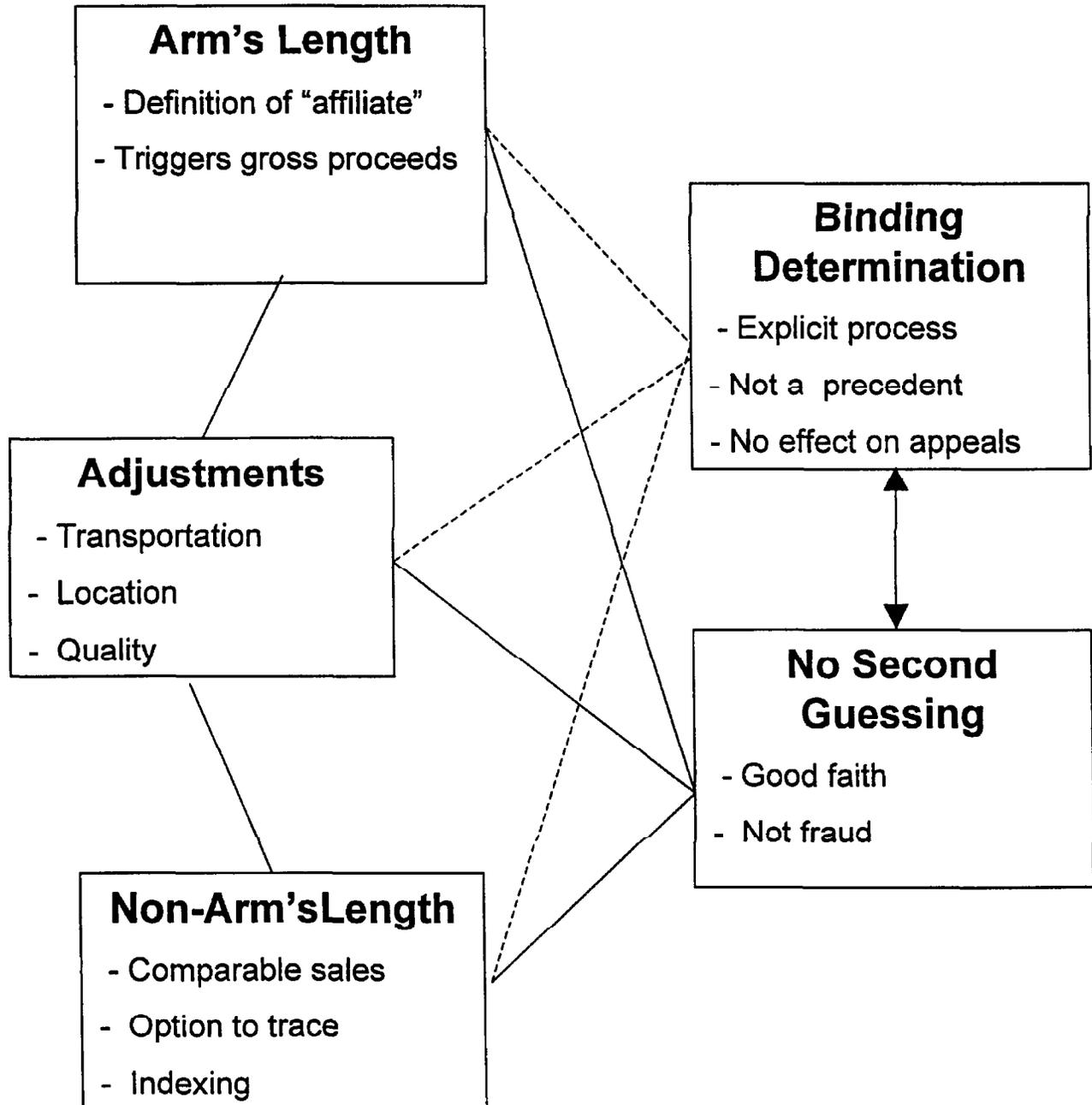


# Oil Valuation Overview



## COMPARABLE SALES MODEL BACKGROUND

- Goal is **value of production at the lease**
- Builds on MMS comparable sales benchmark in the Rockies
- Builds on recognized concept of arms length value of similar production
- Intrinsically simpler than netback

## COMPARABLE SALES MODEL COMPONENTS OF MODEL

- Premised on third party arm's length transactions at the *lease*
- At least 20% of production must be sold / purchased arms length within comparable production area
- Objective data for validation is maintained by lessee
- Minimum number of bids (3) for bid outs
- Value based on weighted average prices of third party transactions
- Adjustments for quality and transportation as necessary
- Annual review with MMS

## COMPARABLE SALES MODEL MERITS

- Resolves MMS perceived concerns with comparable sales/purchase as incorporated in current benchmarks
- Captures the unique values at individual leases (preferred point for lessor and lessee)
- Avoids complexity of calculating differentials between lease and market center
- Used by states and MMS in RIK programs
- Builds on MMS limited proposal in Rockies
- Solves audit issues through simplified procedures

## COMPARABLE SALES MODEL CONCESSIONS

- Stricter qualifications for participation addresses MMS' past criticisms
- Increases required lessee record keeping
- Increased percentage to risk company production over royalty burden
- Minimum number of bids required to demonstrate active market

## Example of a Comparable Lease Sales Program

Produced from Field -----	1050 Bbls
Portion Sold -----	250 Bbls
Weighted Average Price of Portion Sold -----	\$3000
Average Price Per Bbl Sold -----	\$12 / Bbl
Value of Portion Not Sold -----	\$9600

## **BINDING DETERMINATION BACKGROUND**

- Timely Valuation determinations are needed to reasonably conduct business
- MMS and Industry agree that a binding determination process should be included in new rule
- Need a process to implement

## BINDING DETERMINATION INDUSTRY PROPOSAL

- Lessee proposes valuation method for a specific property
- Determinations on a case-by-case basis
- Determination has no precedential value beyond the facts in request
- MMS given 180 days to decide on Lessee's proposal; decision subject to existing appeals procedures
- Subject to later adjustment, the Lessee pays royalty on the proposed method until MMS renders a decision
- Failure to respond within the 180-day period results in automatic adoption of the Lessee's proposed valuation.
- MMS may still act after 180 days but change prospective only

## BINDING DETERMINATION

- (a) A lessee or delegee may request that DOI approve a specific valuation methodology that is consistent with applicable statutes and regulations. In its request, the lessee or delegee shall submit all pertinent information respecting the disposition of production subject to the proposal.
- (b) If DOI concludes that the lessee or delegee failed to provide all of the information required under paragraph (a), DOI shall, within forty-five (45) days of receipt of the valuation proposal, request that the lessee or delegee provide the omitted information.
- (c) DOI shall act on the requested valuation proposal prior to the latter of (i) 180 days after the lessee's or delegee's submission of the proposal or (ii) 135 days after receipt of the additional information submitted by the lessee pursuant to paragraph (b). Any order issued pursuant to this paragraph (c) shall be applicable only to the disposition of production described in the lessee's or delegee's valuation proposal and shall not otherwise have precedential value. In acting on the valuation proposal, DOI shall choose the valuation methodology most applicable under applicable laws and regulations to the disposition of production described in the proposal.
- (d) A lessee or delegee who submits a proposal under paragraph (a) may pay royalties pursuant to the methodology outlined in the proposal until and unless DOI rejects or modifies that proposal. In the event that DOI, prior to the applicable deadline set forth in paragraph (c), prescribes a modified or different methodology which results in additional amounts being due for the period during which royalties were paid pursuant to the proposal,

the lessee or delegee shall pay the additional amounts due with interest calculated pursuant to 30 U.S.C. § 1721(a).

- (e) A lessee or delegee aggrieved by an order issued pursuant to paragraph (c) may appeal the decision under the procedures provided under 30 U.S.C. § 1724(h)(1). If the order is not appealed within thirty (30) days of its receipt by the lessee or delegee and if the lessee or delegee complies with such order, the lessee or delegee shall be deemed to have fulfilled its royalty payment obligations with respect to the disposition of production subject to such order for all periods between the date of the lessee's or delegee's submission of its request and the date, if any, that the Department revokes or modifies the order.
- (f) If MMS fails to act within the applicable period prescribed by paragraph (c) and if the lessee or delegee utilizes the methodology set forth in its proposal as the basis for the payment of its royalties on the disposition of production described in the proposal, then the lessee or delegee shall be deemed to have fulfilled its royalty payment obligations with respect to such disposition of production for the period between the date of the submission of the proposal and the date when DOI orders the lessee or delegee to adhere to a different or modified methodology.
- (g) The Secretary of Interior or Assistant Secretary for Land and Minerals Management may act on the requested valuation proposal pursuant to paragraph (c), in which event any such timely issued order will constitute final agency action, subject to judicial appeal by the lessee or delegee.
- (h) Nothing contained herein shall limit the authority of the Secretary or Assistant Secretary for Lands and Minerals Management to enter into any settlement agreement with a lessee or delegee establishing a valuation methodology which binds the lessee or delegee and DOI.

## **BINDING DETERMINATION MERITS OF INDUSTRY PROPOSAL**

- Industry proposal set forth above resolves an issue acceptable to both MMS and lessees
- Provides timely mechanism to conduct business with certainty
- Eliminates future disputes on audit – simplifies administration
- Builds on MMS 1988 regulation authorizing a lessee to request valuation determination

## TRANSPORTATION BACKGROUND

### History & Impact

- Recovery of capital and O & M
- 1988 Regs Tariff was compromise
- Dispute over tariffs
- Rate of return inadequate

## TRANSPORTATION PROPOSAL

Service is provided – value of service

- Avoids jurisdictional issue
- Use arm's length comparables as cornerstone
- For arm's length use actual rate paid
- For non-arm's length use dual approach
  - More than 20 % non-affiliate – annualized volume weighted average rate paid
  - Less than 20% non-affiliate use modified MMS approach:
    - 2X triple B
    - Never less than 10% capital cost of original line + O&M

## TRANSPORTATION SUBSEA

- Industry proposal previously provided
- Status of subsea transportation guidelines?

## TRANSPORTATION MERITS OF INDUSTRY PROPOSAL

- Sets aside tariff jurisdictional dispute
- Recognizes that transportation is a service
- Uses comparability to validate – good for product value – good for transportation
- Focus on non-arm's length sale and concedes lower rate for non-arm's length
- Treats all parties similarly situated the same
- Certainty & ease for audit
- Provides for Subsea guidelines
- Avoids merchantability issue
- Important element of fair netback

## NO SECOND-GUESSING BACKGROUND

- Rule appears to contain several opportunities where language can be made more certain for both the lessor and lessee
- Industry and MMS concur on stated objective of certainty for arm's length sellers
- *Appears to be some misunderstanding between MMS and industry over whether or not to include no second guessing language*

## NO SECOND-GUESSING INDUSTRY PROPOSAL

1. Further define gross proceeds as those accruing to lessee
2. Move any references to non-arm's length sales from gross proceeds section to the non-arm's length section
3. Eliminate the reference to examples of services performed at no cost, e.g. marketing
4. Evaluation of breach of duty will be comprised of the following:
  - (a) whether or not the total consideration was actually paid, and/or,
  - (b) a comparison of other comparable sales
5. Place the options to either value in accordance with non arm's length provisions or upon first arm's length transaction beyond an exchange or affiliate transaction in non arm's length section
6. Parallel current gas valuation language beginning "You must base value..."

## **NO SECOND-GUESSING MERITS OF PROPOSAL**

- Preserves debate over duty to market
- Provide guidance for evaluation of gross proceeds that both lessee and lessor can understand
- Greater certainty and clarity
- Restricts MMS' broad ability to audit and interpret

## DEFINITION OF AFFILIATE BACKGROUND

- Current language outlines arm's length versus non-arm's length
- Includes presumption of control/non-control without guidelines on how to rebut
- MMS has agreed to accept current definition of control/non-control to define “affiliate”
- Proposed rule uses definition more broadly than current rule

## DEFINITION OF AFFILIATE INDUSTRY PROPOSAL

Sets forth generally applicable guidelines for rebutting presumption in the following manner:

- If affiliated entity can take any relevant action without affirmative vote of lessee, then no control
- If lessee is not general partner of a partnership, then no control
- If lessee is a natural person not related within the fourth degree to the affiliated natural person, then no control  
*- 18 U.S.C.  
(family members)  
2<sup>nd</sup>/3<sup>rd</sup> - cousin*
- If lessee's directors on board of affiliated company cannot block any relevant action of affiliated company, then no control through interlocking directorates
- Use same percentages as existing regulations

## DEFINITION OF AFFILIATE MERITS OF INDUSTRY PROPOSAL

- Implements MMS' stated goal of providing guidelines using current control/non-control guidelines with same percentages
- Establishes objective guidelines not existing in current regulations
- Add clarity and certainty to existing regulations

## ADJUSTMENTS OFF DOWNSTREAM VALUES: LOCATION/QUALITY DIFFERENTIALS BACKGROUND

- Goal is value of **production at the lease**
- Current MMS proposal does not adequately reflect adjustments off index or downstream value to approximate lease value
- Form MMS-4415 is administratively burdensome; information collected may not be useable for purpose intended
- MMS-published differentials would be as much as 24 months out of date
- Current MMS proposal for California uses a starting point (ANS) that is vastly dissimilar from most California crudes even though other published market prices exist that more closely match federal crude quality
- MMS proposal does not allow for all appropriate adjustments such as allowing an adjustment for quality between "aggregation point" and lease

## ADJUSTMENTS OFF DOWNSTREAM VALUES: LOCATION/QUALITY DIFFERENTIALS INDUSTRY PROPOSAL

- Where it can be established that there are no arm's length or comparable sales, can use an netback methodology to approximate lease value
- Uses actual location / quality differentials where available
- Industry and MMS to develop report or contemporaneous tables by region incorporating differentials reflective of recent market conditions
- Differentials to be applied as an adjustment to appropriate index
- Differentials based on actual crude quality at the lease as compared to downstream quality

## **ADJUSTMENTS OFF DOWNSTREAM VALUES: LOCATION/QUALITY DIFFERENTIALS MERITS OF INDUSTRY PROPOSAL**

- Use of more current data makes differentials more reflective of dynamic market
- Uses actual crude quality data at the lease
- Information is not proprietary as reported and is auditable
- Replaces Form 4415 with a more workable method
- Methodology is improvement over quality adjustment to market center indices which MMS appears to accept

## ADJUSTMENTS OFF DOWNSTREAM VALUES: LOCATION/QUALITY DIFFERENTIALS CONCESSIONS

- Specifies adjustments (e.g., transportation and location/quality differentials) for use with an index netback calculation method to better approximate lease value
- Proposal makes a prospective netback adjustment method less objectionable to industry as an option when there are no arm's length sales or comparable sales

## Basic Formula

Formula	Comments
Downstream Sales or Appropriate Market Center Index	Nearest Index Point with like quality (1)
+/- Gravity	Use actual; if no actual, use table such as Gravcap in GCM
+/- Sulfur	Use actual; if no actual, use prevailing practice such as Gravcap in GOM
- Transportation	See Proposed Transportation Adjustments on Page Eight
+/- Location Differential, includes: - Midstream costs +/- Spot to Term +/- Location	Options include: (1) Use buy/sells on a portion of a company's crude as a comparable for crude without buy/sell and not sold (2) Create a "table" adjustment based on internal information on a company by company basis w/ some actual transactions (3) Compile #1 and/or #2 and turn in on a current basis to MMS; MMS consolidate from multiple reporters and publish
Calculated Approximate Lease Value	

**(1) For Index: One publication per crude or a seriatum list per crude -- use first, if no longer published, use second, third, etc.) should be declared by MMS. Starting point for California would be Kern River or other "nearest index point with *like* quality."**

# Draft

1997

**ROCKY MOUNTAIN OIL & GAS ASSOCIATION**

## **TAX COMPARISON REPORT**

**For more information contact:**

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Denver, Colorado 80203-4313  
(303) 860-0099  
(303) 860-0310 Fax**

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Rocky Mountain Oil & Gas Association**

**Revised 9/97**

**TAX COMPARISON STUDY**  
(estimated crude oil only)

**I. EFFECTIVE SEVERANCE TAX RATES**

(including Severance and Conservation Taxes)

Per \$1.00 of Gross Income

1.	Louisiana	\$ .125	
2.	Texas	.075	
3.	Oklahoma	.07095	
4.	New Mexico	.069	(includes privilege tax)
5.	Wyoming	.0606	(oil and gas)
6.	Montana	0.128	post-1985 wells
		0.142	pre-1985 wells
7.	North Dakota	.07	(est)
8.	South Dakota	.0452	
9.	Kansas	.0433	
10.	Utah	.0365	(severance rate graduated, Eff. 1/92)
11.	Nebraska	.035	
12.	Colorado	.0214	(severance rate variable)

**II. EFFECTIVE PROPERTY TAX RATES**

Per \$1.00 of Gross Income

1.	Montana	\$ 0.0	
2.	Wyoming	.0704	(oil and gas)
3.	Colorado	.065	
4.	Kansas	.10	
5.	Utah	.06	
6.	Nebraska	.025	
7.	Texas	.02	
8.	New Mexico	.0133	(production and equipment)
9.	Louisiana	0.0	
10.	North Dakota	0.0	
11.	Oklahoma	0.0	
12.	South Dakota	0.0	

**III. COMPOSITE EFFECTIVE TAX RATES**

(Severance, Conservation, and Property Taxes)

Per \$1.00 of Gross Income

1.	Montana	\$ .128	post-1985 wells
		.142	pre-1985 wells
2.	Wyoming	.131	oil - gas
3.	Louisiana	.125	
4.	Kansas	.1083	
5.	Utah	.15	
6.	Texas	.095	
7.	Colorado	.0864	
8.	New Mexico	.0823	
9.	Oklahoma	.07095	
10.	Nebraska	.06	
11.	North Dakota	.07	(est.)
12.	South Dakota	.0452	

**CODE OF FEDERAL REGULATIONS**  
**TITLE 26—INTERNAL REVENUE**  
**CHAPTER I—INTERNAL REVENUE**  
**SERVICE, DEPARTMENT OF THE**  
**TREASURY**  
**SUBCHAPTER H—INTERNAL REVENUE**  
**PRACTICE**  
**PART 601—STATEMENT OF**  
**PROCEDURAL RULES**  
**SUBPART B—RULINGS AND OTHER**  
**SPECIFIC MATTERS**

*Current through June 2, 1998; 63 FR 29958*

**§ 601.201 Rulings and determinations letters.**

**(a) General practice and definitions.** (1) It is the practice of the Internal Revenue Service to answer inquiries of individuals and organizations, whenever appropriate in the interest of sound tax administration, as to their status for tax purposes and as to the tax effects of their acts or transactions. One of the functions of the National Office of the Internal Revenue Service is to issue rulings in such matters. If a taxpayer's request for a ruling concerns an action that may have an impact on the environment, compliance by the Service with the requirements of the National Environmental Policy Act of 1969 (Pub.L. 91-190) may result in delaying issuing the ruling. Accordingly, taxpayers requesting rulings should take this factor into account. District directors apply the statutes, regulations, Revenue Rulings, and other precedents published in the Internal Revenue Bulletin in the determination of tax liability, the collection of taxes, and the issuance of determination letters in answer to taxpayers' inquiries or requests. For purposes of this section any reference to district director or district office also includes, where appropriate, the Office of the Director, Office of International Operations.

(2) A "ruling" is a written statement issued to a taxpayer or his authorized representative by the National Office which interprets and applies the tax laws to a specific set of facts. Rulings are issued only by the National Office. The issuance of rulings is under the general supervision of the Assistant Commissioner (Technical) and has been largely redelegated to the Director, Corporation

Tax Division and Director, Individual Tax Division.

(3) A "determination letter" is a written statement issued by a district director in response to a written inquiry by an individual or an organization that applies to the particular facts involved, the principles and precedents previously announced by the National Office. A determination letter is issued only where a determination can be made on the basis of clearly established rules as set forth in the statute, Treasury decision, or regulation, or by a ruling, opinion, or court decision published in the Internal Revenue Bulletin. Where such a determination cannot be made, such as where the question presented involves a novel issue or the matter is excluded from the jurisdiction of a district director by the provisions of paragraph (c) of this section, a determination letter will not be issued. However, with respect to determination letters in the pension trust area, see paragraph (o) of this section.

(4) An "opinion letter" is a written statement issued by the National Office as to the acceptability of the form of a master or prototype plan and any related trust or custodial account under sections 401 and 501(a) of the Internal Revenue Code of 1954.

(5) An "information letter" is a statement issued either by the National Office or by a district director which does no more than call attention to a well-established interpretation or principle of tax law, without applying it to a specific set of facts. An information letter may be issued when the nature of the request from the individual or the organization suggests that it is seeking general information, or where the request does not meet all the requirements of paragraph (c) of this section, and it is believed that such general information will assist the individual or organization.

(6) A "Revenue Ruling" is an official interpretation by the Service which has been published in the Internal Revenue Bulletin. Revenue Rulings are issued only by the National Office and are published for the information and guidance of taxpayers, Internal Revenue Service officials, and others concerned.

(7) A "closing agreement," as the term is used herein, is an agreement between the Commissioner of Internal Revenue or his delegate and a taxpayer with respect to a specific issue or issues entered into pursuant to the authority contained in section 7121 of the Internal Revenue Code. Such a closing agreement is based on a ruling which has been signed by the Commissioner or his delegate and in which it is indicated that a closing agreement will be entered into on the basis of the holding of the ruling letter. Closing agreements are final and conclusive except upon a showing of fraud, malfeasance, or misrepresentation of material fact. They may be entered into where it is advantageous to have the matter permanently and conclusively closed, or where a taxpayer can show good and sufficient reasons for an agreement and the Government will sustain no disadvantage by its consummation. In appropriate cases, taxpayers may be required to enter into a closing agreement as a condition to the issuance of a ruling. Where in a single case, closing agreements are requested on behalf of each of a number of taxpayers, such agreements are not entered into if the number of such taxpayers exceed 25. However, in a case where the issue and holding are identical as to all of the taxpayers and the number of taxpayers is in excess of 25, a Mass Closing Agreement will be entered into with the taxpayer who is authorized by the others to represent the entire group. See, for example, Rev. Proc. 78-15, 1978-2 C.B. 488, and Rev. Proc. 78-16, 1978-2 C.B. 489.

**(b) Rulings issued by the National Office.**

(1) In income and gift tax matters and matters involving taxes imposed under Chapter 42 of the Code, the National Office issues rulings on prospective transactions and on completed transactions before the return is filed. However, rulings will not ordinarily be issued if the identical issue is present in a return of the taxpayer for a prior year which is under active examination or audit by a district office, or is being considered by a branch office of the Appellate Division. The National Office issues rulings involving the exempt status of organizations under section 501 or 521 of the Code, only to the extent provided in paragraph (n)

of this section, Revenue Procedure 72-5, Internal Revenue Bulletin No. 1972-1, 19, and Revenue Procedure 68-13, C.B. 1968-1, 764. The National Office issues rulings as to the foundation status of certain organizations under sections 509(a) and 4942(j)(3) of the Code only to the extent provided in paragraph (r) of this section. The National Office issues rulings involving qualification of plans under section 401 of the Code only to the extent provided in paragraph (o) of this section. The National Office issues opinion letters as to the acceptability of the form of master or prototype plans and any related trusts or custodial accounts under sections 401 and 501(a) of the Code only to the extent provided in paragraphs (p) and (q) of this section. The National Office will not issue rulings with respect to the replacement of involuntarily converted property, even though replacement has not been made, if the taxpayer has filed a return for the taxable year in which the property was converted. However, see paragraph (c)(6) of this section as to the authority of district directors to issue determination letters in this connection.

(2) In estate tax matters, the National Office issues rulings with respect to transactions affecting the estate tax of a decedent before the estate tax return is filed. It will not rule with respect to such matters after the estate tax return has been filed, nor will it rule on matters relating to the application of the estate tax to property or the estate of a living person.

(3) In employment and excise tax matters (except taxes imposed under Chapter 42 of the Code), the National Office issues rulings with respect to prospective transactions and to completed transactions either before or after the return is filed. However, the National Office will not ordinarily rule with respect to an issue, whether related to a prospective or a completed transaction, if it knows or has reason to believe that the same or an identical issue is before any field office (including any branch office of the Appellate Division) in connection with an examination or audit of the liability of the same taxpayer for the same or a prior period.

(4) The Service will not issue rulings to business, trade, or industrial associations or to other similar groups relating to the application of

the tax laws to members of the group. However, rulings may be issued to such groups or associations relating to their own tax status or liability provided such tax status or liability is not an issue before any field office (including any branch office of the Appellate Division) in connection with an examination or audit of the liability of the same taxpayer for the same or a prior period.

(5) Pending the adoption of regulations (either temporary or final) that reflect the provisions of any Act, consideration will be given to the issuance of rulings under the conditions set forth below.

(i) If an inquiry presents an issue on which the answer seems to be clear from an application of the provisions of the statute to the facts described, a ruling will be issued in accordance with usual procedures.

(ii) If an inquiry presents an issue on which the answer seems reasonably certain but not entirely free from doubt, a ruling will be issued only if it is established that a business emergency requires a ruling or that unusual hardship will result from failure to obtain a ruling.

(iii) If an inquiry presents an issue that cannot be reasonably resolved prior to the issuance of regulations, a ruling will not be issued.

(iv) In any case in which the taxpayer believes that a business emergency exists or that an unusual hardship will result from failure to obtain a ruling, he should submit with the request a separate letter setting forth the facts necessary for the Service to make a determination in this regard. In this connection, the Service will not deem a "business emergency" to result from circumstances within the control of the taxpayer such as, for example, scheduling within an inordinately short time the closing date for a transaction or a meeting of the board of directors or the shareholders of a corporation.

(c) **Determination letters issued by district directors.** (1) In income and gift tax matters, and in matters involving taxes imposed under Chapter 42 of the Code, district directors issue determination letters in response to taxpayers' written requests submitted to their offices

involving completed transactions which affect returns over which they have audit jurisdiction, but only if the answer to the question presented is covered specifically by statute, Treasury Decision or regulation, or specifically by a ruling, opinion, or court decision published in the Internal Revenue Bulletin. A determination letter will not usually be issued with respect to a question which involves a return to be filed by the taxpayer if the identical question is involved in a return or returns already filed by the taxpayer. District directors may not issue determination letters as to the tax consequence of prospective or proposed transactions, except as provided in subparagraphs (5) and (6) of this paragraph.

(2) In estate and gift tax matters, district directors issue determination letters in response to written requests submitted to their offices affecting the estate tax returns of decedents that will be audited by their offices, but only if the answer to the questions presented are specifically covered by statute, Treasury Decision or regulation, or by a ruling, opinion, or court decision published in the Internal Revenue Bulletin. District directors will not issue determination letters relating to matters involving the application of the estate tax to property or the estate of a living person.

(3) In employment and excise tax matters (except excise taxes imposed under Chapter 42 of the Code), district directors issue determination letters in response to written requests from taxpayers who have filed or who are required to file returns over which they have audit jurisdiction, but only if the answers to the questions presented are specifically covered by statute, Treasury Decision or regulation, or a ruling, opinion, or court decision published in the Internal Revenue Bulletin. Because of the impact of these taxes upon the business operation of the taxpayer and because of special problems of administration both to the Service and to the taxpayer, district directors may take appropriate action in regard to such requests, whether they relate to completed or prospective transactions or returns previously filed or to be filed.

(4) Notwithstanding the provisions of subparagraphs (1), (2), and (3), of this paragraph,

a district director will not issue a determination letter in response to an inquiry which presents a question specifically covered by statute, regulations, rulings, etc., published in the Internal Revenue Bulletin, where (i) it appears that the taxpayer has directed a similar inquiry to the National Office, (ii) the identical issue involving the same taxpayer is pending in a case before the Appellate Division, (iii) the determination letter is requested by an industry, trade association, or similar group, or (iv) the request involves an industrywide problem. Under no circumstances will a district director issue a determination letter unless it is clearly indicated that the inquiry is with regard to a taxpayer or taxpayers who have filed or are required to file returns over which his office has or will have audit jurisdiction. Notwithstanding the provisions of subparagraph (3) of this paragraph, a district director will not issue a determination letter on an employment tax question when the specific question involved has been or is being considered by the Central Office of the Social Security Administration. Nor will district directors issue determination letters on excise tax questions if a request is for a determination of a constructive sales price under section 4216(b) or 4218(e) of the Code. However, the National Office will issue rulings in this area. See paragraph (d)(2) of this section.

(5) District directors issue determination letters as to the qualification of plans under sections 401 and 405(a) of the Code, and as to the exempt status of related trusts under section 501 of the Code, to the extent provided in paragraphs (o) and (q) of this section. Selected district directors also issue determination letters as to the qualification of certain organizations for exemption from Federal income tax under sections 501 and 521 of the Code, to the extent provided in paragraph (n) of this section. Selected district directors also issue determination letters as to the qualification of certain organizations for foundation status under sections 509(a) and 4942(j)(3) of the Code, to the extent provided in paragraph (r) of this section.

(6) District directors issue determination letters with regard to the replacement of involuntarily converted property under section 1033 of the Code even though the replacement has

not been made, if the taxpayer has filed his income tax return for the year in which the property was involuntarily converted.

(7) A request received by a district director with respect to a question involved in an income, estate, or gift tax return already filed will, in general, be considered in connection with the examination of the return. If response is made to such inquiry prior to an examination or audit, it will be considered a tentative finding in any subsequent examination or audit of the return.

**(d) Discretionary authority to issue rulings and determination letters.** (1) It is the practice of the Service to answer inquiries of individuals and organizations, whenever appropriate in the interest of sound tax administration, as to their status for tax purposes and the tax effect of their acts or transactions.

(2) There are, however, certain areas where, because of the inherently factual nature of the problem involved, or for other reasons, the Service will not issue rulings or determination letters. A ruling or determination letter is not issued on alternative plans of proposed transactions or on hypothetical situations. A specific area or a list of these areas is published from time to time in the Internal Revenue Bulletin. Such list is not all inclusive since the Service may decline to issue rulings or determination letters on other questions whenever warranted by the facts or circumstances of a particular case. The National Office and district directors may, when it is deemed appropriate and in the best interest of the Service, issue information letters calling attention to well-established principles of tax law.

(3) The National Office will issue rulings in all cases on prospective or future transactions when the law or regulations require a determination of the effect of a proposed transaction for tax purposes, as in the case of a transfer coming within the provisions of sections 1491 and 1492 of the Code, or an exchange coming within the provisions of section 367 of the Code. The National Office will issue rulings in all cases involving the determination of a constructive sales price under section 4216(b) or 4218(e) of the Code.

**(e) Instructions to taxpayers.** (1) A request for a ruling or a determination letter is to be submitted in duplicate if (i) more than one issue is presented in the request or (ii) a closing agreement is requested with respect to the issue presented. There shall accompany the request a declaration, in the following form: "Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of the requested ruling or determination letter are true, correct, and complete". The declaration must accompany requests that are postmarked or hand delivered to the Internal Revenue Service after October 31, 1976. The declaration must be signed by the person or persons on whose behalf the request is made.

(2) Each request for a ruling or a determination letter must contain a complete statement of all relevant facts relating to the transaction. Such facts include names, addresses, and taxpayer identifying numbers of all interested parties; the location of the district office that has or will have audit jurisdiction over the return or report of each party; a full and precise statement of the business reasons for the transaction; and a carefully detailed description of the transaction.

In addition, true copies of all contracts, wills, deeds, agreements, instruments, and other documents involved in the transaction must be submitted with the request. However, relevant facts reflected in documents submitted must be included in the taxpayer's statement and not merely incorporated by reference, and must be accompanied by an analysis of their bearing on the issue or issues, specifying the pertinent provisions. (The term "all interested parties" is not to be construed as requiring a list of all shareholders of a widely held corporation requesting a ruling relating to a reorganization, or a list of employees where a large number may be involved in a plan.) The request must contain a statement whether, to the best of the knowledge of the taxpayer or his representative, the identical issue is being considered by any field office of the Service in connection with an active examination or audit of a tax return of the taxpayer already filed or is being considered by a branch office of

the Appellate Division. Where the request pertains to only one step of a larger integrated transaction, the facts, circumstances, etc., must be submitted with respect to the entire transaction. The following list contains references to revenue procedures for advance ruling requests under certain sections of the Code.

(i) For ruling requests under section 103 of the Code, see Rev. Proc. 79-4, 1979-1 C.B. 483, as amplified by Rev. Proc. 79-12, 1979-1 C.B. 492. Revenue Procedure 79-12 sets forth procedures for submitting ruling requests to which sections 103 and 7478 of the Code apply.

(ii) For ruling requests under section 367 of the Code, see Rev. Proc. 68-23, 1968-1 C.B. 821, as amplified by Rev. Proc. 76-20, 1976-1 C.B. 560, Rev. Proc. 77-5, 1977-1 C.B. 536, Rev. Proc. 78-27, 1978-2 C.B. 526, and Rev. Proc. 78-28, 1978-2 C.B. 526. Revenue Procedure 68-23 contains guidelines for taxpayers and their representatives in connection with issuing rulings under section 367. Revenue Procedure 76-20 explains the effect of Rev. Rul. 75-561, 1975-2 C.B. 129, on transactions described in section 3.03(1)(c) of Rev. Proc. 68-23. Revenue Procedure 77-5 sets forth procedures for submitting ruling requests under section 367, and the administrative remedies available to a taxpayer within the Service after such rulings have been issued. Revenue Procedure 78-27 relates to the notice requirement set forth in the section 367(b) temporary regulations. Revenue Procedure 78-28 relates to the timely filing of a section 367(a) ruling request.

(iii) For ruling requests under section 351 of the Code, see Rev. Proc. 73-10, 1973-1 C.B. 760, and Rev. Proc. 69-19, 1969-2 C.B. 301. Revenue Procedure 73-10 sets forth the information to be included in the ruling request. Revenue Procedure 69-19 sets forth the conditions and circumstances under which an advance ruling will be issued under section 367 of the Code that an agreement which purports to furnish technical know-how in exchange for stock is a transfer of property within the meaning of section 351.

(iv) For ruling requests under section 332, 334(b)(1), or 334(b)(2) of the Code, see Rev. Proc. 73-17, 1973-2 C.B. 465. Revenue

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Procedure 73-17 sets forth the information to be included in the ruling request.

(v) See Rev. Proc. 77-30, 1977-2 C.B. 539, and Rev. Proc. 78-18, 1978-2 C.B. 491, relating to rules for the issuance of an advance ruling that a proposed sale of employer stock to a related qualified defined contribution plan of deferred compensation will be a sale of the stock rather than a distribution of property.

(vi) For ruling requests under section 302 or section 311 of the Code, see Rev. Proc. 73-35, 1973-2 C.B. 490. Revenue Procedure 73-35 sets forth the information to be included in the ruling request.

(vii) For ruling requests under section 337 of the Code (and related section 331) see Rev. Proc. 75-32, 1975-2 C.B. 555. Revenue Procedure 75-32, sets forth the information to be included in the ruling request.

(viii) For ruling requests under section 346 of the Code (and related sections 331 and 336), see Rev. Proc. 73-36, 1973-2 C.B. 496. Revenue Procedure 73-36 sets forth the information to be included in the ruling request.

(ix) For ruling requests under section 355 of the Code, see Rev. Proc. 75-35, 1975-2 C.B. 561. Revenue Procedure 75-35 sets forth the information to be included in the ruling request.

(x) For ruling requests under section 368(a)(1)(E) of the Code, see Rev. Proc. 78-33, 1978-2 C.B. 532. Revenue Procedure 78-33 sets forth the information to be included in the ruling request.

(xi) For ruling requests concerning the classification of an organization as a limited partnership where a corporation is the sole general partner, see Rev. Proc. 72-13, 1972-1 C.B. 735. See also Rev. Proc. 74-17, 1974-1 C.B. 438, and Rev. Proc. 75-16, 1975-1 C.B. 676. Revenue Procedure 74-17 announces certain operating rules of the Service relating to the issuance of advance ruling letters concerning the classification of organizations formed as limited partnerships. Revenue Procedure 75-16 sets forth a checklist outlining required information frequently omitted from requests for rulings relating to classification of organizations for Federal tax purposes.

(xii) For ruling requests concerning the creditability of a foreign tax under section 901 or 903 of the Code, see Rev. Rul. 67-308, 1967-2 C.B. 254, which sets forth requirements for establishing that translations of foreign law are satisfactory as evidence for purposes of determining the creditability of a particular foreign tax.

Original documents should not be submitted because documents and exhibits become a part of the Internal Revenue Service file which cannot be returned. If the request is with respect to a corporate distribution, reorganization, or other similar or related transaction, the corporate balance sheet nearest the date of the transactions should be submitted. (If the request relates to a prospective transaction, the most recent balance sheet should be submitted.) In the case of requests for rulings or determination letters, other than those to which section 6104 of the Code applies, postmarked or hand delivered to the Internal Revenue Service after October 31, 1976, there must accompany such requests a statement, described in subparagraph (5) of this paragraph, of proposed deletions pursuant to section 6110(c) of the Code. Such statement is not required if the request is to secure the consent of the Commissioner with respect to the adoption of or change in accounting or funding periods or methods pursuant to section 412, 442, 446(e), or 706 of the Code. If, however, the person seeking the consent of the Commissioner receives from the Internal Revenue Service a notice that proposed deletions should be submitted because the resulting ruling will be open to public inspection under section 6110, the statement of *proposed deletions must be submitted within 20 days* after such notice is mailed.

(3) As an alternative procedure for the issuance of rulings on prospective transactions, the taxpayer may submit a summary statement of the facts he considers controlling the issue, in addition to the complete statement required for ruling requests by subparagraph (2) of this paragraph. Assuming agreement with the taxpayer's summary statement, the Service will use it as the basis for the ruling. Any taxpayer

wishing to adopt this procedure should submit with the request for ruling:

(i) A complete statement of facts relating to the transaction, together with related documents, as required by subparagraph (2) of this paragraph; and

(ii) A summary statement of the facts which he believes should be controlling in reaching the requested conclusion.

Where the taxpayer's statement of controlling facts is accepted, the ruling will be based on those facts and only this statement will ordinarily be incorporated in the ruling letter. It is emphasized, however, that:

(a) This procedure for a "two-part" ruling request is elective with the taxpayer and is not to be considered a required substitute for the regular procedure contained in paragraphs (a) through (m) of this section;

(b) Taxpayers' rights and responsibilities are the same under the "two-part" ruling request procedure as those provided in paragraphs (a) through (m) of this section;

(c) The Service reserves the right to rule on the basis of a more complete statement of facts it considers controlling and to seek further information in developing facts and restating them for ruling purposes; and

(d) The "two-part" ruling request procedure will not apply where it is inconsistent with other procedures applicable to specific situations such as: Requests for permission to change accounting method or period; application for recognition of exempt status under section 501 or 521; or rulings on employment tax status.

(4) If the taxpayer is contending for a particular determination, he must furnish an explanation of the grounds for his contentions, together with a statement of relevant authorities in support of his views. Even though the taxpayer is urging no particular determination with regard to a proposed or prospective transaction, he must state his views as to the tax results of the proposed action and furnish a statement of relevant authorities to support such views.

(5) In order to assist the Internal Revenue Service in making the deletions, required by section 6110(c) of the Code, from the text of

rulings and determination letters, which are open to public inspection pursuant to section 6110(a) of the Code, there must accompany requests for such rulings or determination letters either a statement of the deletions proposed by the person requesting the ruling or determination letter and the statutory basis for each proposed deletion, or a statement that no information other than names, addresses, and taxpayer identifying numbers need be deleted. Such statement shall be made in a separate document. The statement of proposed deletions shall be accompanied by a copy of the request for a ruling or determination letter and supporting documents, on which shall be indicated, by the use of brackets, the material which the person making such request indicates should be deleted pursuant to section 6110(c) of the Code. The statement of proposed deletions shall indicate the statutory basis, under section 6110(c) of the Code, for each proposed deletion. The statement of proposed deletions shall not appear or be referred to anywhere in the request for a ruling or determination letter. If the person making the request decides to request additional deletions pursuant to section 6110(c) of the Code prior to the time the ruling or determination letter is issued, additional statements may be submitted.

(6) If the request is with respect to the qualification of a plan under section 401 or 405(a) of the Code, see paragraphs (o) and (p) of this section. If the request is with respect to the qualification of an organization for exemption from Federal income tax under section 501 or 521 of the Code, see paragraph (n) of this section, Revenue Procedure 72-5, Internal Revenue Bulletin No. 1972-1, 19, and Revenue Procedure 68 13, C.B. 1968 1, 764.

(7) A request by or for a taxpayer must be signed by the taxpayer or his authorized representative. If the request is signed by a representative of the taxpayer, or if the representative is to appear before the Internal Revenue Service in connection with the request, he must either be:

(i) An attorney who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia, and who files with the

service a written declaration that he is currently qualified as an attorney and he is authorized to represent the principal,

(ii) A certified public accountant who is duly qualified to practice in any State, possession, territory, Commonwealth, or the District of Columbia, and who files with the Service a written declaration that he is currently qualified as a certified public accountant and he is authorized to represent the principal, or

(iii) A person, other than an attorney or certified public accountant, enrolled to practice before the Service, and who files with the Service a written declaration that he is currently enrolled (including in the declaration either his enrollment number or the expiration date of his enrollment card) and that he is authorized to represent the principal. (See Treasury Department Circular No. 230, as amended, C.B. 1966-2, 1171, for the rules on who may practice before the Service. See § 601.503(c) for the statement required as evidence of recognition as an enrollee.)

(8) A request for a ruling or an opinion letter by the National Office should be addressed to the Commissioner of Internal Revenue, Attention: T:FP:T. Washington, D.C. 20224. A request for a determination letter should be addressed to the district director of internal revenue whose office has or will have audit jurisdiction of the taxpayer's return. See also paragraphs (n) through (q) of this section.

(9) Any request for a ruling or determination letter that does not comply with all the provisions of this paragraph will be acknowledged, and the requirements that have not been met will be pointed out. If a request for a ruling lacks essential information, the taxpayer or his representative will be advised that if the information is not forthcoming within 30 days, the request will be closed. If the information is received after the request is closed, the request will be reopened and treated as a new request as of the date of the receipt of the essential information. Priority treatment of such request will be granted only in rare cases upon the approval of the division director.

(10) A taxpayer or his representative who desires an oral discussion of the issue or issues

involved should indicate such desire in writing when filing the request or soon thereafter in order that the conference may be arranged at that stage of consideration when it will be most helpful.

(11) Generally, prior to issuing the ruling or determination letter, the National Office or district director shall inform the person requesting such ruling or determination letter orally or in writing of the material likely to appear in the ruling or determination letter which such person proposed be deleted but which the Internal Revenue Service determines should not be deleted. If so informed, the person requesting the ruling or determination letter may submit within 10 days any further information, arguments or other material in support of the position that such material be deleted. The Internal Revenue Service will attempt, if feasible, to resolve all disagreements with respect to proposed deletions prior to the issuance of the ruling or determination letter. However, in no event shall the person requesting the ruling or determination letter have the right to a conference with respect to resolution of any disagreements concerning material to be deleted from the text of the ruling or determination letter, but such matters may be considered at any conference otherwise scheduled with respect to the request.

(12) It is the practice of the Service to process requests for rulings, opinion letters, and determination letters in regular order and as expeditiously as possible. Compliance with a request for consideration of a particular matter ahead of its regular order, or by a specified time, tends to delay the disposition of other matters. Requests for processing ahead of the regular order, made in writing in a separate letter submitted with the request or subsequent thereto and showing clear need for such treatment, will be given consideration as the particular circumstances warrant. However, no assurance can be given that any letter will be processed by the time requested. For example, the scheduling of a closing date for a transaction or a meeting of the Board of Directors or shareholders of a corporation without due regard to the time it may take to obtain a ruling, opinion letter, or determination letter will not be deemed sufficient reason for handling a request ahead of its regular

order. Neither will the possible effect of fluctuation in the market price of stocks on a transaction be deemed sufficient reason for handling a request out of order. Requests by telegram will be treated in the same manner as requests by letter. Rulings, opinion letters, and determination letters ordinarily will not be issued by telegram. A taxpayer or his representative desiring to obtain information as to the status of his case may do so by contacting the appropriate division in the office of the Assistant Commissioner (Technical).

(13) The Director, Corporation Tax Division, has responsibility for issuing rulings in areas involving the application of Federal income tax to taxpayers; those involving income tax conventions or treaties with foreign countries; those involving depreciation, depletion, and valuation issues; and those involving the taxable status of exchanges and distributions in connection with corporate reorganizations, organizations, liquidations, etc.

(14) The Director, Individual Tax Division, has responsibility for issuing rulings with respect to the application of Federal income tax to taxpayers (including individuals, partnerships, estates and trusts); areas involving the application of Federal estate and gift taxes including estate and gift tax conventions or treaties with foreign countries; areas involving certain excise taxes; the provisions of the Internal Revenue Code dealing with procedure and administration; and areas involving employment taxes.

(15) A taxpayer or the taxpayer's representative desiring to obtain information as to the status of the taxpayer's case may do so by contacting the following offices with respect to matters in the areas of their responsibility:

Official	Telephone Number
Director, Corporation Tax Division	566-4504, 566-4505.
Director, Individual Tax Division	566-3767 or 566-3788.

(16) After receiving the notice pursuant to section 6110(f)(1) of the Code of intention to disclose the ruling or determination letter (including a copy of the version proposed to be

open to public inspection and notations of third-party communications pursuant to section 6110(d) of the Code), if the person requesting the ruling or determination letter desires to protest the disclosure of certain information in the ruling or determination letter, such person must within 20 days after the notice is mailed submit a written statement identifying those deletions not made by the Internal Revenue Service which such person believes should have been made. Such person shall also submit a copy of the version of the ruling or determination letter proposed to be open to public inspection on which such person indicates, by the use of brackets, the deletions proposed by the taxpayer but which have not been made by the Internal Revenue Service. Generally, the Internal Revenue Service will not consider the deletion under this subparagraph of any material which the taxpayer did not, prior to the issuance of the ruling or determination letter, propose be deleted. The Internal Revenue Service shall, within 20 days after receipt of the response by the person requesting the ruling or determination letter to the notice pursuant to section 6110(f)(1) of the Code, mail to such person its final administrative conclusion with respect to the deletions to be made.

(17) After receiving the notice pursuant to section 6110(f)(1) of the Code of intention to disclose (but no later than 60 days after such notice is mailed), the person requesting a ruling or determination letter may submit a request for delay of public inspection pursuant to either section 6110(g)(3) or section 6110(g)(3) and (4) of the Code. The request for delay shall be submitted to the office to which the request for a ruling or determination letter was submitted. A request for delay shall contain the date on which it is expected that the underlying transaction will be completed. The request for delay pursuant to section 6110(g)(4) of the Code shall contain a statement from which the Commissioner may determine that good cause exists to warrant such delay.

(18) When a taxpayer receives a ruling or determination letter prior to the filing of his return with respect to any transaction that has been consummated and that is relevant to the return

limiting the number of conferences to which a taxpayer is entitled will not foreclose the invitation of a taxpayer to attend further conferences when, in the opinion of National Office personnel, such need arises. All additional conferences of the type discussed in this paragraph are held only at the invitation of the Service.

(4) It is the responsibility of the taxpayer to add to the case file a written record of any additional data, lines of reasoning, precedents, etc., which are proposed by the taxpayer and discussed at the conference but which were not previously or adequately presented in writing.

**(g) Referral of matters to the National Office.** (1) Requests for determination letters received by the district directors that, in accordance with paragraph (c) of this section, may not be acted upon by a district office, will be forwarded to the National Office for reply and the taxpayer advised accordingly. District directors also refer to the National Office any request for a determination letter that in their judgement warrants the attention of the National Office. See also the provisions of paragraphs (o), (p), and (q) of this section, with respect to requests relating to qualification of a plan under sections 401 and 405(a) of the Code, and paragraph (n) of this section, Revenue Procedure 72-5, Internal Revenue Bulletin No. 1972-1, 19, and Revenue Procedure 68-13, C.B. 1968-1, 764, with respect to application for recognition of exempt status under sections 501 and 521 of the Code.

(2) If the request is with regard to an issue or an area with respect to which the Service will not issue a ruling or a determination letter, such request will not be forwarded to the National Office, but the district office will advise the taxpayer that the Service will not issue a ruling or a determination letter on the issue. See paragraph (d)(2) of this section.

**(h) Referral of matters to district offices.** Requests for rulings received by the National Office that, in accordance with the provisions of paragraph (b) of this section, may not be acted upon by the National Office will be forwarded for appropriate action to the district office that has or will have audit jurisdiction of the taxpayer's return

and the taxpayer advised accordingly. If the request is with respect to an issue or an area of the type discussed in paragraph (d)(2) of this section, the taxpayer will be so advised and the request may be forwarded to the appropriate district office for association with the related return or report of the taxpayer.

**(i) Review of determination letters.** (1) Determination letters issued with respect to the types of inquiries authorized by paragraphs (c)(1), (2), and (3) of this section are not generally reviewed by the National Office as they merely inform a taxpayer of a position of the Service which has been previously established either in the regulations or in a ruling, opinion, or court decision published in the Internal Revenue Bulletin. If a taxpayer believes that a determination letter of this type is in error, he may ask the district director to reconsider the matter. He may also ask the district director to request advice from the National Office. In such event, the procedures in paragraphs (b)(5) of § 601.105 will be followed.

(2) The procedures for review of determination letters relating to the qualification of employers' plans under section 401(a) of the Code are provided in paragraph (o) of this section.

(3) The procedures for review of determination letters relating to the exemption from Federal income tax of certain organizations under sections 501 and 521 of the Code are provided in paragraph (n) of this section.

**(j) Withdrawals of requests.** The taxpayer's request for a ruling or a determination letter may be withdrawn at any time prior to the signing of the letter of reply. However, in such a case, the National Office may furnish its views to the district director whose office has or will have audit jurisdiction of the taxpayer's return. The information submitted will be considered by the district director in a subsequent audit or examination of the taxpayer's return. Even though a request is withdrawn, all correspondence and exhibits will be retained in the Service and may not be returned to the taxpayer.

**(k) Oral advice to taxpayers.** (1) The Service does not issue rulings or determination letters upon oral requests. Furthermore, National

Office officials and employees ordinarily will not discuss a substantive tax issue with a taxpayer or his representative prior to the receipt of a request for a ruling, since oral opinions or advice are not binding on the Service. This should not be construed as preventing a taxpayer or his representative from inquiring whether the Service will rule on a particular question. In such cases, however, the name of the taxpayer and his identifying number must be disclosed. The Service will also discuss questions relating to procedural matters with regard to submitting a request for a ruling, including the application of the provisions of paragraph (e) to the particular case.

(2) A taxpayer may, of course, seek oral technical assistance from a district office in the preparation of his return or report, pursuant to other established procedures. Such oral advice is advisory only and the Service is not bound to recognize it in the examination of the taxpayer's return.

**(1) Effect of rulings.** (1) A taxpayer may not rely on an advance ruling issued to another taxpayer. A ruling, except to the extent incorporated in a closing agreement, may be revoked or modified at any time in the wise administration of the taxing statutes. See paragraph (a)(6) of this section for the effect of a closing agreement. If a ruling is revoked or modified, the revocation or modification applies to all open years under the statutes, unless the Commissioner or his delegate exercises the discretionary authority under section 7805(b) of the Code to limit the retroactive effect of the revocation or modification. The manner in which the Commissioner or his delegate generally will exercise this authority is set forth in this section. With reference to rulings relating to the sale or lease of articles subject to the manufacturers excise tax and the retailers excise tax, see specifically subparagraph (8) of this paragraph.

(2) As part of the determination of a taxpayer's liability, it is the responsibility of the district director to ascertain whether any ruling previously issued to the taxpayer has been properly applied. It should be determined whether the representations upon which the ruling was based reflected an accurate statement of the

material facts and whether the transaction actually was carried out substantially as proposed. If, in the course of the determination of the tax liability, it is the view of the district director that a ruling previously issued to the taxpayer should be modified or revoked, the findings and recommendations of that office will be forwarded to the National Office for consideration prior to further action. Such reference to the National Office will be treated as a request for technical advice and the procedures of paragraph (b)(5) of § 601.105 will be followed. Otherwise, the ruling is to be applied by the district office in its determination of the taxpayer's liability.

(3) Appropriate coordination with the National Office will be undertaken in the event that any other field official having jurisdiction of a return or other matter proposes to reach a conclusion contrary to a ruling previously issued to the taxpayer.

(4) A ruling found to be in error or not in accord with the current views of the Service may be modified or revoked. Modification or revocation may be effected by a notice to the taxpayer to whom the ruling originally was issued, or by a Revenue Ruling or other statement published in the Internal Revenue Bulletin.

(5) Except in rare or unusual circumstances, the revocation or modification of a ruling will not be applied retroactively with respect to the taxpayer to whom the ruling was originally issued or to a taxpayer whose tax liability was directly involved in such ruling if (i) there has been no misstatement or omission of material facts, (ii) the facts subsequently developed are not materially different from the facts on which the ruling was based, (iii) there has been no change in the applicable law, (iv) the ruling was originally issued with respect to a prospective or proposed transaction, and (v) the taxpayer directly involved in the ruling acted in good faith in reliance upon the ruling and the retroactive revocation would be to his detriment. To illustrate, the tax liability of each employee covered by a ruling relating to a pension plan of an employer is directly involved in such ruling. Also, the tax liability of each shareholder is directly involved in a ruling related to the reorganization of a corporation. However,

advice and the procedures of subparagraph (a) of this paragraph will be followed.

**(5) Protest of adverse determination letters.** (i) Upon the issuance of an adverse determination letter, the key district director will advise the organization of its right to protest the determination by requesting Appeals office consideration. However, if the determination was made on the basis of National Office technical advice the organization may not appeal the determination to the Appeals office. See § 601.106(a)(1)(iv)(a). To request Appeals consideration, the organization shall submit to the key district director, within 30 days from the date of the letter, a statement of the facts, law, and arguments in support of its position. The organization must also state whether it wishes an Appeals office conference. Upon receipt of an organization's request for Appeals consideration, the key district director will, if it maintains its position, forward the request and the case file to the Appeals office.

(ii) Except as provided in subdivisions (iii) and (iv) of this subparagraph, the Appeals office, after considering the organization's protest and any additional information developed, will advise the organization of its decision and issue an appropriate determination letter. Organizations should make full presentation of the facts, circumstances, and arguments at the initial level of consideration, since submission of additional facts, circumstances, and arguments at the Appeals office may result in suspension of Appeals procedures and referral of the case back to the key district for additional consideration.

(iii) If the proposed disposition by the Appeals office is contrary to a National Office technical advice or ruling concerning tax exemption, issued prior to the case, the proposed disposition will be submitted, through the Office of the Regional Director of Appeals, to the Assistant Commissioner (Employee Plans and Exempt Organizations) or, in a section 521 case, to the Assistant Commissioner (Technical). The decision of the Assistant Commissioner will be followed by the Appeals office. See § 601.106(a)(1)(iv)(b).

(iv) If the case involves an issue that is not

covered by published precedent or on which there may be nonuniformity between regions, and on which the National Office has not previously ruled, the Appeals office must request technical advice from the National Office. If, during the consideration of its case by Appeals the organization believes that the case involves an issue with respect to which referral for technical advice is appropriate, the organization may ask the Appeals office to request technical advice from the National Office. The Appeals office shall advise the organization of its right to request referral of the issue to the National Office for technical advice. If the Appeals office requests technical advice, the decision of the Assistant Commissioner (Employee Plans and Exempt Organizations) or, in a section 521 case, the decision of the Assistant Commissioner (Technical), in a technical advice memorandum is final and the Appeals office must dispose of the case in accordance with that decision. See subparagraph (9)(viii)(a) of this paragraph.

**(6) Revocation of modification of rulings or determination letters on exemption and foundation status.** (i) An exemption ruling or determination letter may be revoked or modified by a ruling or determination letter addressed to the organization, or by a revenue ruling or other statement published in the Internal Revenue Bulletin. The revocation or modification may be retroactive if the organization omitted or misstated a material fact, operated in a manner materially different from that originally represented, or engaged in a prohibited transaction of the type described in subdivision (vii) of this subparagraph. In any event, revocation or modification will ordinarily take effect no later than the time at which the organization received written notice that its exemption ruling or determination letter might be revoked or modified.

(ii)(a) If a key district director concludes as a result of examining an information return, or considering information from any other source, that an exemption ruling or determination letter should be revoked or modified, the organization will be advised in writing of the proposed action and the reasons therefor. If the case involves an issue not covered by published precedent or on

deletion of any material which the plan/organization did not, prior to the time when the National Office sent its reply to the request for technical advice to the key district director or the Appeals office, propose be deleted. The Internal Revenue Service shall, within 20 days after receipt of the response by the plan/organization to the notice pursuant to section 6110(f)(1) of the Code (if applicable), mail to the plan/organization its final administrative conclusion regarding the deletions to be made.

**(vii) Action on technical advice in key district offices and in Appeals offices.** (a) Unless the key district director or the Chief, Appeals Office, feels that the conclusions reached by the National Office in a technical advice memorandum should be reconsidered and promptly requests such reconsideration, the key district office or the Appeals office will proceed to process the case on the basis of the conclusions expressed in the technical advice memorandum. The effect of technical advice on the plan's/organization's case once the technical advice memorandum is adopted is set forth in subdivision (viii) of this subparagraph.

(b) The key district director or the Appeals office will furnish the plan/organization a copy of the technical advice memorandum described in subdivision (vi)(c) of this subparagraph and the notice pursuant to section 6110(f)(1) of the Code (if applicable) of intention to disclose the technical advice memorandum (including a copy of the version proposed to be open to public inspection and notations of third party communications pursuant to section 6110(d) of the Code). The preceding sentence shall not apply to technical advice memoranda involving civil fraud or criminal investigations, or jeopardy or termination assessments, as described in subdivision (iii)(j) of this subparagraph (except to the extent provided in subdivision (vi)(e) of this subparagraph) or to documents to which section 6104 of the Code applies.

(c) In those cases in which the National Office advises the key district director or the Appeals office that it should not furnish a copy of the technical advice memorandum to the plan/organization, the key district director or the

Appeals office will so inform the plan/organization if it requests a copy.

**(viii) Effect of technical advice.** (a) A technical advice memorandum represents an expression of the views of the Service as to the application of law, regulations, and precedents to the facts of a specific case, and is issued primarily as a means of assisting Service officials in the examination and closing of the case involved. In cases under this subparagraph concerning a plan's/organization's qualification or an organization's status, the conclusions expressed in a technical advice memorandum are final and will be followed by the key district office or the Appeals office.

(b) Unless otherwise stated, a holding in a technical advice memorandum will be applied retroactively. Moreover, where the plan/organization had previously been issued a favorable ruling or determination letter (whether or not it was based on a previous technical advice memorandum) concerning that transaction, its purpose, or method of operation, the holding in a technical advice memorandum that is adverse to the plan/organization is also applied retroactively unless the Assistant Commissioner or Deputy Assistant Commissioner (Employee Plans and Exempt Organizations) or, in a section 521 case, the Assistant Commissioner or Deputy Assistant Commissioner (Technical) exercises the discretionary authority under section 7805(b) of the Code to limit the retroactive effect of the holding as illustrated, in the case of rulings, in paragraph (l)(5) of this section.

(c) Technical advice memoranda often form the basis for revenue rulings. For the description of revenue rulings and the effect thereof, see §§ 601.601(d)(2)(i)(a) and 601.601(d)(2)(v).

(d) A key district director or an Appeals office may raise an issue in a taxable period, even though technical advice may have been asked for and furnished with regard to the same or a similar issue in any other taxable period. However, if the proposal by the key district director or the Appeals office is contrary to a prior technical advice or ruling issued to the same plan/organization, the proposal must be submitted to the National Office. See § 601.106(a)(1)(iv)(b) and subdivision (i)(d) of this subparagraph.

## Binding Determinations Language from Department of Treasury Regulations

17 CFR § 400.2

(a) Office responsible. The regulations in this chapter are promulgated by the Assistant Secretary (Domestic Finance) pursuant to a delegation of authority from the Secretary of the Treasury. The office responsible for implementation of the regulations, including interpretations and action on requests for exemption, classification or modification, is the Office of the Commissioner, Bureau of the Public Debt.

(b)(1) Exemptions and classifications. Section 15C(a)(4) of the Act (> 15 U.S.C. 78o-5(a)(4)) authorizes the Secretary to exempt any government securities broker or dealer or class thereof, conditionally or unconditionally, from the requirements of registration or regulations promulgated under section 15C. In addition, section 15C(b)(3) of the Act (> 15 U.S.C. 78o-5(b)(3)) provides for classification, by the Secretary, of government securities brokers or dealers and authorizes the whole or partial exemption of classes from rules under section 15C or the application of different standards to different classes.

(2) Interpretations. Although the appropriate regulatory agencies, as defined in " 400.3, and the self-regulatory organizations, as defined in section 3(a)(26) of the Act (> 15 U.S.C. 78c(a)(26)), have enforcement responsibility under section 15C of the Act, Treasury is responsible for interpretation of section 15C(b) of the Act (> 15 U.S.C. 78o-5(b)) and related sections and for interpretation and amendment of the regulations under this chapter (with the exception of Forms G-FIN and G-FINW, " 449.1 and 449.2 of this chapter, which are the responsibility of the Board of Governors of the Federal Reserve System ["Board"]).

(c) Requests for interpretations, exemptions, classifications.

(1) Interpretations under this chapter may be provided, at the discretion of the Department, to firms or individuals actually or potentially affected by the Act or regulations, or to their representatives.

(2) Exemptions and classifications under sections 15C (a), (b) and (d) of the Act (> 15 U.S.C. 78o-5 (a), (b), and (d)) and related sections and Treasury regulations thereunder may be provided at the discretion of the Department and after consultation with the SEC and the Board, to firms or individuals actually or potentially affected by the Act or regulations, or to their representatives.

(3) All requests for exemptions and classifications, and all requests for binding interpretations, shall be in writing, and shall conform to the following procedures.

(i) The names of the company or companies and all other persons involved shall be stated. Letters pertaining to unnamed companies or persons or hypothetical situations will not be answered.

(ii) The letter must contain a concise but complete statement of all material facts, a complete and accurate description of the entire transaction if

the request is transactional (even though a request may apply to only a portion of a transaction), and a concise and unambiguous statement of the request, including precise statutory and regulatory citations.

(iii) The letter shall indicate why the writer believes a problem exists or interpretation is needed, the writer's opinion on the matter, and the basis for such opinion.

(iv) In addition to requests for confidential treatment under paragraph (c)(7)(ii) of this section, a person may request confidential treatment of information that is submitted as part of, or in support of, a request for interpretation, exemption, or classification. A separate request for confidential treatment and the basis for such request shall be submitted at the time the information for which confidential treatment is requested is submitted. The request for confidential treatment must specifically identify the information for which such confidential treatment is requested. To the extent practicable, the information should be segregated from information for which confidential treatment is not requested and should be clearly marked as confidential.

(v) Information designated as confidential in accordance with paragraph (c)(3)(iv) of this section shall not be disclosed to a person requesting such information other than in accordance with the procedures outlined in the Department's regulations published at > 31 CFR 1.6.

(vi) An original and two copies of each request letter shall be submitted to the Office of the Commissioner, Bureau of the Public Debt, Room 553, 999 E Street NW., Washington, DC 20239-0001. The envelope shall be marked "Government Securities Act Request." The letter shall indicate in the upper right hand corner of the first page the particular sections of the Act and of the regulations at issue.

(4) A written response by the Department to a request filed as stated in paragraph (c)(3) of this section shall be binding, with respect to the requester, on the Department, but shall cease to be binding if the facts are not as stated in the request or, prospectively, if the Department issues a *superseding interpretation*. In responding to such a request, the Department will, where appropriate, consult with and may obtain the formal concurrence of the appropriate regulatory agencies or their staffs. The Department understands that even if formal concurrence is not received the appropriate regulatory agencies and self-regulatory organizations will give appropriate deference to binding interpretations of the Department. The Department also expects the SEC staff to reflect such interpretations in responding, pursuant to the established procedures of the Commission. to no-action requests concerning rules the SEC enforces.

(5) The Department may decline to issue an interpretation for any reason and, in particular, may require that a requester make inquiry of its appropriate regulatory agency, the Commission or designated examining authority before the Department responds to a request.

(6) The Department will also provide informal oral and written advice, but such advice is not binding on the Department or on any other agency or organization.

(7)(i) Except as provided in paragraphs (c)(3)(iv) and (c)(7)(ii) of this section, every letter or other written communication requesting the Department to provide interpretive legal advice under the Act or to grant, deny or modify an exemption, classification or modification of the regulations, together with any written response thereto, shall be made available for inspection and copying as soon as practicable after the response has been sent or given to the person requesting it. These documents will be made available at the following location: Treasury Department Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

(ii) Any person submitting a letter or communication may also simultaneously submit a request that the letter or communication and the Department's response be accorded confidential treatment for a specified period of time not to exceed 120 days from the date the response has been made or given to such person. The request shall state the basis upon which the request for confidential treatment has been made. If the Department determines that the request for confidential treatment should be denied, the requester will be given 30 days to withdraw either the request for confidential treatment or the letter or communication requesting an interpretation, classification, or exemption.

(d) Effect of Commission interpretations. Interpretations of the Commission and its staff (including no-action positions) and of the designated examining authorities, of any Commission regulation expressly adopted by reference in these regulations shall be of the same effect as if the regulation being interpreted were solely the Commission's regulation. However, in the event the Treasury has issued a formal interpretation on the subject, the Treasury understands that the Commission will give that interpretation appropriate deference, particularly with respect to both subsequent no-action positions and the continued validity of prior no-action positions.

17 CFR § 400.2, Office responsible for regulations; filing of requests for exemptions, for interpretations and of other materials.

----- Excerpt from pages 84816-84818

### Rationale for S&P BBB Bond Rate in 1988 Rule

- Industry suggested variety of alternative rates, among them:
  - Prime rate plus 5%
  - Prime rate plus 7%
  - 1 ½ times the average 20-year Treasury bill rate
  - 150 % of Moody's AAA rate
  - The rate of return methodology adopted by FERC in Opinion No. 154-B
  - Rate based on cost of debt and equity financing/weighted average cost of capital
  - Moody's 20-year BBB rate plus 9%
  - 23% pre-tax rate of return
  - Risk component of 5-7% above Moody's AAA rate
  
- Several commenters said MMS should account for more risk in its allowable rate of return. Otherwise the rate would serve as an economic disincentive for lessees to invest in high-risk ventures, such as frontier areas.
  
- MMS's rationale:
  - **MMS examined several options and decided that a rate of return should be closely associated with the cost of money necessary to construct transportation facilities.**
  
  - MMS examined the corporate bond rate very carefully and concluded that such rates were representative of the loan rates on sums of money comparable to that expected for the construction of transportation facilities.
  
  - Although there are some very high risks involved with some oil and gas ventures, such as wildcat drilling, **the risk associated with building and developing a pipeline to move oil that has already been discovered is a much different risk.**
  
  - The risk of default (financial risk) is considered in corporate bond rates. Considering the risks related to transportation systems, a rate of return based on an applicable corporate bond rate would be appropriate for transportation systems.
  
  - MMS considered all the alternatives suggested but believed that the use of an appropriate corporate bond rate adequately considered the risk associated with a transportation system and that there was no rational basis for increasing a rate of return by arbitrarily adding percentage points simply to increase a lessee's allowance.
  
  - MMS then determined that the rate of return should be based on Standard and Poor's BBB industrial bond rate. (The S&P rate was judged superior to the Moody's rate because S&P's rating system was more comprehensive and well-

defined. The BBB rate was chosen because it represented a medium-grade obligation having an adequate capacity to pay interest and repay principle.)

The S&P BBB rate, being riskier than S&P's AAA, AA, or A rates, is higher than those rates. Companies such as Exxon and Amoco then carried AAA rates. Examples of AA-rated companies were Shell, Chevron/Gulf, and Mobil. Examples of A-rated companies included ARCO and Kerr-McGee. A few of those rated BBB included Tenneco, Union Oil of California, and Pennzoil. Among BB-rated companies were Marathon and Phillips. Examples of B-rated companies included Texaco/Getty and Amerada Hess. The BBB rate thus represented an intermediate choice fairly reflective of the industry overall.

Following is a comparison of the Standard & Poor's BBB Industrial Average for January for each of the last five years to the various rates of Shell, Chevron, and Texaco.

**Standard & Poor's BBB Industrial Average for January (MMS rate)**

1993	8.94%
1994	8.28%
1995	9.44%
1996	7.83%
1997	7.73%

These rates represent an average of over 2,000 companies with BBB bond ratings. As such they have remained relatively stable over the last 5 years. Note that a BBB bond rating is the last rating before a junk bond.

**Shell Transportation and Trading Company**

A review of Shell's annual report filed with the SEC shows the following returns on average capital employed by Shell. These rates represent the average return Shell realized on all of its investments including a profit.

1993	7.9%
1994	10.4%
1995	10.6%
1996	13.2%
1997	14.5%

Shell Oil Company's cost of borrowing funds based on its AAA bond rating for the last 5 years is as follows: (Source: S&P February Bond Guide (January Transactions))

Year	S&P Rating	Current Yield
1993	AAA	5.96 - 8.21
1994	AAA	5.82 - 8.47
1995	AAA	6.16 - 7.76
1996	AAA	5.96 - 7.70
1997	AAA	6.57 - 7.49

### **Chevron Corporation**

A review of Chevron's annual report filed with the SEC shows the following returns on average capital employed by Chevron. These rates represent the average return Chevron realized on all of its investments including a profit.

1996	12.7%
1997	15.0%

Chevron Capital USA's cost of borrowing funds based on its AA bond rating for the last 2 years is as follows: (Source: S&P February Bond Guide (January Transactions))

Year	S&P Rating	Current Yield
1996	AA	6.91 - 8.98
1997	AA	7.30 - 9.36

**Texaco Inc.**

A review of Texaco's annual report filed with the SEC shows the following returns on average capital employed by Texaco. These rates represent the average return Texaco realized on all of its investments including a profit.

1995 6.9%  
1996 14.9%  
1997 17.3%

Texaco Capital's cost of borrowing funds based on its A+ bond rating for the last 3 years is as follows: (Source: S&P February Bond Guide (January Transactions))

Statistics from S&P February Bond Guide (January Transactions)

Year	S&P Rating	Current Yield
1995	A+	7.17 - 8.98
1996	A+	6.58 - 8.81
1997	A+	7.49 - 8.82